

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,)
)
)
 Plaintiff,)
)
v.)
)
NORFOLK SOUTHERN RAILWAY)
COMPANY, *et al.*,) Case No. 2:18-cv-530
)
)
 Defendants.)

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR JOINT
MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendants Norfolk Southern Railway Company (“NS”) and Norfolk and Portsmouth Belt Line Railroad Company (“NPBL”) (collectively, “Defendants”), by counsel, state as follows in support of their Joint Motion to File Documents Under Seal. Defendants seek to file the following documents under seal: Defendants’ unredacted Opposition to CSX Transportation, Inc.’s Motion in Limine Regarding the Uniform Rate Provision, and Exhibits 3, 5, 6, 7, 10, 12, and 13.

1. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties’ use of confidential information produced in this case. ECF No. 79.

2. Paragraph 2 of the Stipulated Protective Order defines “Protected Material” as material containing information that “must or may be protected from disclosure,” including material designated “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” ECF No. 79, ¶ 2.

3. Defendants’ unredacted Opposition to CSX Transportation, Inc.’s Motion in Limine Regarding the Uniform Rate Provision and Exhibits 3, 5, 6, 7, 10, 12, and 13 refer or cite

to documents, or contain testimony, that have or has been designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by Plaintiff CSX Transportation, Inc. (“CSX”), NS, and/or NPBL, under the Stipulated Protective Order.

4. These documents and the testimony designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” contain highly confidential and sensitive information relating to the parties’ transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm the parties.

5. These documents and the designated deposition testimony are “Protected Material” under the Stipulated Protective Order. ECF No. 79, ¶ 2.

6. The Stipulated Protective Order requires Defendants to file these documents and the designated deposition testimony under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, Defendants request that the Court enter the proposed order attached to their Joint Motion to Seal as **Exhibit A** authorizing and directing Defendants to file their unredacted Opposition to CSX Transportation, Inc.’s Motion in Limine Regarding the Uniform Rate Provision and Exhibits 3, 5, 6, 7, 10, 12, and 13 under seal, and directing the Clerk of Court to maintain such exhibits under seal pending further order of the Court.

Defendants also file herewith a Notice of Sealing Motion as required by Local Rule 5(C). Defendants waive oral argument on this Motion.

Dated: September 2, 2022

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

/s/ *Michael E. Lacy*

Alan D. Wingfield (VSB No. 27489)

Michael E. Lacy (VSB No. 48477)
Massie P. Cooper (VSB No. 82510)
TROUTMAN PEPPER HAMILTON SANDERS, LLP
1001 Haxall Point
Richmond, Virginia 23219
Telephone: (804) 697-1200
Facsimile: (804) 698-6061
Email: alan.wingfield@troutman.com
Email: michael.lacy@troutman.com
Email: massie.cooper@troutman.com

John C. Lynch (VSB No. 39267)
Kathleen M. Knudsen (VSB No. 90845)
TROUTMAN PEPPER HAMILTON SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
Telephone: (757) 687-7500
Facsimile: (757) 687-7510
Email: john.lynch@troutman.com
Email: kathleen.knudsen@troutman.com

Tara L. Reinhart
Thomas R. Gentry
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 371-7000
tara.reinhart@skadden.com
thomas.gentry@skadden.com

Attorneys for Norfolk Southern Railway Company

**NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY**

/s/ W. Ryan Snow
James L. Chapman, IV, Esq.
W. Ryan Snow, Esq.
Alexander R. McDaniel, Esq.
CRENSHAW, WARE & MARTIN, P.L.C.
150 W. Main Street, Suite 1500
Norfolk, Virginia 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
Email: jchapman@cwm-law.com

Email: wrsnow@cwm-law.com
Email: amcdaniel@cwm-law.com

*Attorneys for Norfolk and Portsmouth Belt Line
Railroad Company*

CERTIFICATE OF SERVICE

I certify that on this 2nd day of September 2022, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system.

/s/ Michael E. Lacy

Michael E. Lacy (VSB No. 48477)